

## STATEMENT OF CLAIMS STATUS

Claims 1-10 are pending in the application.

Claims 1-10 stand rejected.

## SUMMARY OF OFFICE ACTION

### Advisory Action

1. The Examiner states that Applicant's Response filed on Feb. 22, 1999 has been considered but is not deemed to place the application in condition for allowance. The proposed amendments will not be entered because (1) they raise new issues that would require further consideration and/or search and because (2) they do not materially reduce or simplify the issues for appeal. The Examiner further states that the declaration raises new issues, and that the amendments to claim 1 raise new issues and the limitation of "a period of 24 hours" raises the issues of new matter.

## AMENDMENTS

1. Please replace Claim 1 with the following new Claim 14:

Claim 14 (new) A method for exterminating subterranean termites consisting of contacting the termites with ~~a killing solution comprising~~ an aqueous formulation containing capsicum.

2. Please cancel claims 11-13, without prejudice.

## RESPONSE

### Summary of Examiner Interview

On about March 15, 1999, Examiner and Attorney Shahani conducted a telephonic interview. The

above claim language was agreed to as descriptive of allowable subject matter, upon payment of the additional petition and fee for responding to an outstanding office action within the 6<sup>th</sup> month.

The Examiner further stated that should further persuasive scientific evidence be provided, the scope of allowable subject matter would include extermination of essentially any type of termite.

Ample support in the originally filed application is provided for all of the agreed upon allowable subject matter.

#### **Incorporation of Amendment and Response to Paper No. 8**

Attached hereto for filing herewith and incorporation herein in its entirety, please find the previously filed Amendment and Response to Paper No. 8 containing the Declaration of Jeffrey Y. Honda, Ph.D. in support of the Application.

#### **Scope of Amendments**

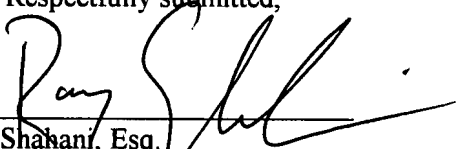
Applicant respectfully submits that the scope of the application and allowable claims is any method, procedure or other practice for killing, exterminating, reducing the numbers of or otherwise modifying the effects of subterranean termites consisting at least in part of contacting the termites, directly or indirectly such as with liquid or vapor, with a killing solution comprising an aqueous formulation containing at least capsicum as an active killing ingredient in said killing solution.

#### **CONCLUSION**

Applicants submit that all claims, as presented and/or as amended herein, describe useful, novel and non-obvious patentable subject matter. Applicants further submit that all claims as presented and/or amended herein and all depending pending claims are presently allowable and respectfully request that Examiner allow the application to issue.

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Respectfully submitted,

  
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**CERTIFICATE OF DELIVERY WITH FEDERAL EXPRESS SERVICE**

I hereby certify that this paper and the documents referred to as attached therein are being deposited with the Federal Express delivery service using overnight service, under 37 CFR 1.08, on the date indicated above and is addressed to "Jack Lavinder, Examiner, U.S. Patent and Trademark Office, Crystal Mall 1, Re-Eng. Lab., 1911 S. Clark Place, Suite 600, Arlington, VA 22202-3513" using airbill number 7917 0804 2916.

Signed: 

Date Mailed: March 19, 1999